

**EXPLANATORY MEMORANDUM TO
THE NATIONAL ASSEMBLY FOR WALES (TRANSFER OF PROPERTY,
RIGHTS AND LIABILITIES) ORDER 2007**

2007 No. 1269

1. This explanatory memorandum has been prepared by the Wales Office and is laid before Parliament by Command of Her Majesty.

2. **Description**

This instrument transfers specified property, rights and liabilities of the National Assembly for Wales as constituted by the Government of Wales Act 1998 (“the 1998 Act Assembly”) to the new National Assembly for Wales Commission (“the Commission”). It is necessary to reflect the changes in the structure of the devolution settlement in Wales contained in the Government of Wales Act 2006 (GOWA 2006)

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Background**

4.1 Currently, the Assembly (as constituted by the 1998 Act) is a single corporate body. Following the Assembly elections in May 2007, GOWA 2006 provides for separation of the National Assembly for Wales (the legislature) from the Welsh Assembly Government, including the Welsh Ministers (the executive). GOWA 2006 also provides for the establishment of the Commission to provide property, staff and services to the National Assembly for Wales. This separation, and the establishment of the Commission, will occur following the Assembly elections in May 2007.

4.2 Paragraph 39 of Schedule 11 to GOWA 2006 makes provision for the transfer of property, rights and liabilities to which the 1998 Act Assembly is entitled or subject in connection with certain functions. It provides for such property, rights and liabilities to transfer to and vest in the transferee of the relevant function. In most cases, the transferee of the function is the Welsh Ministers, so that the related property, rights and liabilities transfer to the Welsh Ministers as well.

4.3 However, it is appropriate for certain property, rights and liabilities to transfer to and vest in the Commission rather than in the Welsh Ministers. This instrument is therefore required to transfer certain property rights and liabilities to the Commission.

5. **Extent**

The instrument technically extends to the whole of the UK but in practice its application is limited to Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 GOWA 2006 received Royal Assent on 25 July 2006. The purpose of GOWA 2006 is to make provision about the government of Wales.

7.2 Currently, all functions under GOWA 1998 are vested in the 1998 Act Assembly, which is a corporate body. In practice, the Assembly has agreed to delegate the majority of executive functions to the First Minister, so that the First Minister and Ministers appointed by him (the GOWA 1998 Assembly Government) carry out executive functions on behalf of the 1998 Act Assembly. GOWA 2006 effects the legal separation of the executive and legislative arms of the 1998 Act Assembly; it establishes the Welsh Assembly Government (made up of the First Minister, Welsh Ministers and their deputies and the Counsel General) as an entity separate from, but accountable to, the new Assembly. Most of the statutory functions of the 1998 Act Assembly will become functions of the Welsh Ministers.

7.3 The dissolution of the 1998 Act Assembly and the creation of the new Assembly will take place following the election in May 2007. The Commission will also come into being at this time, to provide services, staff and property to the new Assembly.

7.4 Property, rights and liabilities to which the 1998 Act Assembly is subject need to be transferred to the Welsh Ministers or to the Commission, as appropriate bearing in mind their respective roles. This Order is required to ensure that certain property, rights and liabilities, which would otherwise transfer mainly to the Welsh Ministers under Schedule 11 to GOWA 2006, are transferred to the Commission instead.

7.5 Article 1 of the Order deals with commencement, citation and interpretation. It provides that the Order will come into force immediately after the end of the initial period, which is defined in section 161(5) of GOWA 2006. This means that the Order will come into force immediately after the day on which the First Minister is appointed following the May 2007 elections.

7.6 Article 2 transfers to the Commission the 1998 Act Assembly's interest in the Senedd and Pierhead Building in Cardiff Bay and the Visitor Centre at Colwyn Bay.

- 7.7 Under Article 3, the lease of the 1998 Act Assembly's office in Cardiff Bay transfers to the Commission, subject to a sub-lease of part of the office to the Welsh Ministers.
- 7.8 Article 4 makes provision for properties which have been used and occupied predominantly by the GOWA 1998 Assembly Government to transfer to the Welsh Ministers under Schedule 11 to GOWA 2006, but with the ability for any such properties to be subject to dual use agreements allowing the Commission to share the use of them.
- 7.9 Article 5 transfers the "seal" of the 1998 Act Assembly to the Assembly Commission. This seal will be of historical rather than practical value, as the Commission will have its own new seal.
- 7.10 Article 6 makes a general provision for transfer to the Commission of property, rights and liabilities that relate to the activities of the Assembly Parliamentary Service. It applies only in respect of property, rights or liabilities which are not subject to express provision elsewhere in the Order.
- 7.11 Article 7 deals with the contract to provide ICT services to the 1998 Act Assembly, to provide for continuation of service to the Welsh Assembly Government and the Commission.
- 7.12 Article 8 makes provision in relation to the 1998 Act Assembly's pension services administration contract, providing for the continuation of service to the Commission and Welsh Assembly Government.
- 7.13 Article 9 provides for the Commission to have rights over certain records of the 1998 Act Assembly which are in existence before the Order comes into force. These are records which are either held by the Assembly Parliamentary Service immediately before the Order comes into force, or which are provided to the Commission by the Welsh Assembly Government, and which relate to property, rights and liabilities that are transferred to the Commission under the Order.
- 7.14 Article 10 provides mechanisms for determining disputes that may arise either in relation to the terms of the dual use agreements referred to in article 4, or in relation to the agreement for the terms of the sub-lease of part of the National Assembly for Wales Office to the Welsh Ministers, to be entered into under article 3(2).
- 7.15 Article 11 makes transitional and saving provisions.

Consultation

7.16 This Order makes provision to deal with the transition from the 1998 Act Assembly to the new arrangements under GOWA 2006, and does not contain new policy on which public consultation is required. Therefore, there has been no public consultation on the Order, however, relevant interested parties have been consulted.

8. **Impact**

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. **Contact**

Sue Olley at the Wales Office, Tel: 020 7270 0552 or e-mail: sue.olley@walesoffice.gsi.gov.uk can answer legal queries regarding this instrument.